

FIRST REGULAR SESSION

HOUSE BILL NO. 968

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WARD.

Read 1st time March 13, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

2248L.011

AN ACT

To repeal sections 379.316, 379.321, 379.362, 379.425 and 379.888, RSMo 2000, and to enact in lieu thereof four new sections relating to insurance.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 379.316, 379.321, 379.362, 379.425 and 379.888, RSMo 2000, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections 379.316,
3 379.321, 379.425 and 379.888, to read as follows:

379.316. 1. Section 379.017 and sections 379.316 to 379.361 apply to insurance
2 companies incorporated pursuant to sections 379.035 to 379.355, section 379.080, sections
3 379.060 to 379.075, sections 379.085 to 379.095, sections 379.205 to 379.310, and to insurance
4 companies of a similar type incorporated pursuant to the laws of any other state of the United
5 States, and alien insurers licensed to do business in this state, which transact fire and allied lines,
6 marine and inland marine insurance, to any and all combinations of the foregoing or parts
7 thereof, and to the combination of fire insurance with other types of insurance within one policy
8 form at a single premium, on risks or operations in this state, except:

- 9 (1) Reinsurance, other than joint reinsurance to the extent stated in section 379.331;
10 (2) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection
11 and indemnity, or other risks commonly insured pursuant to marine, as distinguished from inland
12 marine, insurance policies;
13 (3) Insurance against loss or damage to aircraft;
14 (4) All forms of motor vehicle insurance; and
15 (5) All forms of life, accident and health, and workers' compensation insurance.

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 2. Inland marine insurance shall be deemed to include insurance now or hereafter defined
17 by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the
18 director, or as established by general custom of the business, as inland marine insurance.

19 3. Commercial property and commercial casualty insurance policies [which meet the
20 exemption requirements of section 379.362 shall be exempt from those insurance laws of this
21 state which concern the regulation by the director of the department of insurance of the policy
22 language, policy provisions or the format of such policies, or the regulation of the rates used to
23 calculate the amount of premium charged] **are subject to rate and form filing requirements**
24 **as provided in section 379.321.**

 379.321. 1. Every insurer shall file with the director, except as to commercial property
2 or commercial casualty insurance as provided in subsection 6 of this section and as to inland
3 marine risks which by regulation or general custom of the business are not written according to
4 manual rates or rating plans, every manual of classifications, rules, underwriting rules and rates,
5 every rating plan and every modification of the foregoing which it uses and the policies and
6 forms to which such rates are applied. Any insurer may satisfy its obligation to make any such
7 filings by becoming a member of, or a subscriber to, a licensed rating organization which makes
8 such filings and by authorizing the director to accept such filings on its behalf, provided that
9 nothing contained in section 379.017 and sections 379.316 to 379.361 shall be construed as
10 requiring any insurer to become a member of or a subscriber to any rating organization or as
11 requiring any member or subscriber to authorize the director to accept such filings on its behalf.
12 Filing with the director by such insurer or licensed rating organization within ten days after such
13 manuals, rating plans or modifications thereof or policies or forms are effective shall be
14 sufficient compliance with this section.

15 2. Except as to commercial property or commercial casualty insurance as provided in
16 subsection 6 of this section [and as to contracts or policies for inland marine risks as to which
17 filings are not required], no insurer shall make or issue a policy or contract except pursuant to
18 filings which are in effect for that insurer or pursuant to section 379.017 and sections 379.316
19 to 379.361. Any rates, rating plans, rules, classifications or systems, in effect on August 13,
20 1972, shall be continued in effect until withdrawn by the insurer or rating organization which
21 filed them.

22 3. Upon the written application of the insured, stating his or her reasons therefor, filed
23 with the insurer, a rate in excess of that provided by a filing otherwise applicable may be used
24 on any specific risk.

25 4. Every insurer which is a member of or a subscriber to a rating organization shall be
26 deemed to have authorized the director to accept on its behalf all filings made by the rating
27 organization which are within the scope of its membership or subscribership, provided:

28 (1) That any subscriber may withdraw or terminate such authorization, either generally
29 or for individual filings, by written notice to the director and to the rating organization and may
30 then make its own independent filings for any kinds of insurance, or subdivisions, or classes of
31 risks, or parts or combinations of any of the foregoing, with respect to which it has withdrawn
32 or terminated such authorization, or may request the rating organization, within its discretion,
33 to make any such filing on an agency basis solely on behalf of the requesting subscriber; and

34 (2) That any member may proceed in the same manner as a subscriber unless the rating
35 organization shall have adopted a rule, with the approval of the director:

36 (a) Requiring a member, before making an independent filing, first to request the rating
37 organization to make such filing on its behalf and requiring the rating organization, within thirty
38 days after receipt of such request, either:

39 a. To make such filing as a rating organization filing;

40 b. To make such filing on an agency basis solely on behalf of the requesting member;

41 or

42 c. To decline the request of such member; and

43 (b) Excluding from membership any insurer which elects to make any filing wholly
44 independently of the rating organization.

45 5. Any change in a filing made pursuant to this section during the first six months of the
46 date such filing becomes effective shall be approved or disapproved by the director within ten
47 days following the director's receipt of notice of such proposed change.

48 6. [Commercial property and commercial casualty insurance policies which meet the
49 exemption requirements of section 379.362 shall adhere to the filing requirements of this section,
50 provided however, that the filings for such policies shall be for informational purposes only.
51 Therefore, all manuals of classifications, rules, underwriting rules, rates, rate plans and
52 modifications, policy forms and other forms to which such rates are applied, shall be filed with
53 the director for policies which meet the exemption requirements of section 379.362. Such filings
54 shall be made with the director within thirty days after such materials are used by the insurer, but
55 such policies and rates need not be reviewed or approved by the department of insurance as a
56 condition of their use. Nothing in this subsection shall require the filing of individual policies
57 or the rates related thereto where the original policy forms, manuals, rates and rules for the
58 insurance plan or program to which such individual policies conform have already been filed
59 with the director.] **Commercial property and commercial casualty requirements differ as**
60 **follows:**

61 **(1) All commercial property and commercial casualty insurance rates, rate plans,**
62 **modifications, and manuals of classifications, where appropriate, shall be filed with the**
63 **director for informational purposes only. Such rates are not to be reviewed or approved**

64 by the department of insurance as a condition of their use. Nothing in this subsection shall
65 require the filing of individual rates where the original manuals, rates and rules for the
66 insurance plan or program to which such individual policies conform have already been
67 filed with the director;

68 (2) If an insurer will only renew a commercial casualty or commercial property
69 insurance policy with an increase in premium or deductible of twenty-five percent or more,
70 a "premium alteration requiring notification" notice must be mailed or delivered by the
71 insurer at least sixty days prior to the expiration date of the policy. Such notice shall be
72 directed to the agent of record and to the named insured at the address shown in the policy.
73 If the insurer fails to meet this notice requirement, the insured shall have the option of
74 continuing the policy for the remainder of the notice period plus an additional thirty days
75 at the premium rate of the existing policy or contract. This provision does not apply if the
76 insurer has offered to renew a policy without such an increase in premium or if the insured
77 fails to pay a premium due or any advance premium required by the insurer for renewal.
78 For purposes of this section, "premium alteration requiring notification" means an
79 increase in premium of twenty-five percent or more or an increase in the deductible of
80 twenty-five percent or more. For commercial multiperil policies, no "premium alteration
81 requiring notification" shall be required unless the increase in premium or deductible for
82 all of a policyholder's policies taken together amounts to a twenty-five percent annual
83 increase in premium;

84 (3) Commercial property and commercial casualty policy forms shall be filed with
85 the director as provided pursuant to subsection 1 of this section. However, if after review,
86 it is determined that corrective action must be taken to modify the filed forms, the director
87 shall impose such corrective action on a prospective basis. All policyholders with
88 previously issued forms subject to such corrective action shall be deemed to have coverage
89 enhancements retroactive to their inception date;

90 (4) For purposes of this section, "commercial casualty" means "commercial
91 casualty insurance" as defined in section 379.882. For purposes of this section,
92 "commercial property" means insurance, which is for business and professional interests,
93 whether for profit, nonprofit or public in nature, on real property of every kind and cause,
94 and against loss consequential upon the loss or damage, other than noncontractual legal
95 liability for loss or damage, and does not include title insurance;

96 (5) Nothing in this subsection shall limit the director's authority over excessive,
97 inadequate or unfairly discriminatory rates.

379.425. [1.] Sections 379.420 to 379.510 apply to casualty insurance, including
2 fidelity, surety and guaranty bonds, and to all forms of motor vehicle insurance, on risks or

3 operations in this state, except:

4 (1) Reinsurance, other than joint reinsurance to the extent stated in section 379.460 and
5 subsection 2 of section 379.430;

6 (2) Insurance against workers' compensation liability;

7 (3) Accident and health insurance;

8 (4) Insurance against loss of or damage to aircraft, or against liability, other than
9 employers' liability, arising out of the ownership, maintenance or use of aircraft.

10 [2. Commercial casualty insurance policies which meet the exemption requirements of
11 section 379.362 shall be exempt from those insurance laws of this state which concern the
12 regulation by the director of insurance of the policy language, policy provisions or the format of
13 such policies, or regulation of the rates used to calculate the amount of premium charged.]

379.888. 1. As used in sections 379.888 to 379.893, the following terms mean:

2 (1) "A" rated risk", any insurance coverage for which rates are individually determined
3 based upon judgment because neither a rate service organization nor the insurer has yet
4 established a manual rate based upon experience, except that if a rate service organization or the
5 insurer acquires sufficient experience to establish, or if the insurer itself has, a manual rate for
6 such coverage, then such coverage shall no longer be considered an "A" rated risk for each
7 insurer;

8 (2) "Base rate", the rate designed to reflect the average aggregate experience of a
9 particular market, prior to adjustment for individual risk characteristics resulting from
10 application of any rating plan;

11 (3) "Classification", a grouping of insurance risks according to a classification system
12 used by an insurer;

13 (4) "Classification system", a schedule of classifications and a rule or set of rules used
14 by an insurer for determining the classification applicable to an insured;

15 (5) "Commercial casualty insurance", casualty insurance for business or nonprofit
16 interests which is not for personal, family, or household purposes;

17 (6) "Director", the director of the department of insurance;

18 (7) "Rate", a monetary amount applied to the units of exposure basis assigned to a
19 classification and used by an insurer to determine the premium for an insured;

20 (8) "Rating plan", a rule or set of rules used by an insurer to calculate premium for an
21 insured, and the parameter values used in such calculation, after application of classification
22 premium rates to units of exposure; and

23 (9) "Rating system", a collection of rating plans to be used by an insurer, rules for
24 determining which rating plans are applicable to an insured, a classification system, and other
25 rules used by an insurer for determining contractual consideration for insured.

26 2. [Every filing of commercial casualty insurance premium rates, rating plans or rating
27 systems by an insurer or rating organization shall be submitted to the director for review prior
28 to becoming effective if it produces an increase or decrease exceeding twenty-five percent
29 annually from changes in any:

- 30 (1) Base rates;
- 31 (2) Rating basis;
- 32 (3) Rating plans;
- 33 (4) Manual rules;
- 34 (5) Territorial definitions; or
- 35 (6) Combination of such rating system components of subdivisions (1) to (5) of this
36 subsection.

37 3.] Nothing in this section applies to premium increases or decreases from:

- 38 (1) Change in hazard of the insured's operation;
- 39 (2) Change in magnitude of the exposure basis for the insured, including, without
40 limitation, changes in payroll or sales;
- 41 (3) "A" rated risks[; or
- 42 (4) Commercial casualty insurance that is exempt pursuant to section 379.362].

43 [4.] 3. Any renewal notice of a commercial casualty insurance policy as defined in
44 section 379.882 for any Missouri risk or portion thereof which would have the effect of
45 increasing the premium charged to the insured due to a change in any scheduled rating factor
46 applied to the policy during the previous policy period shall contain or be accompanied by a
47 notice to the insured informing the insured that any inquiry by the insured concerning the change
48 may be directed to the agent of record or directly to the insurer. When any insured makes a
49 request for information pursuant to this subsection, the insurer, directly or through the insurer's
50 agent, shall inform the insured in writing in terms sufficiently clear and specific of the basis for
51 any reduction in a scheduled rating credit or increase in a scheduled rating debit which is applied
52 to the policy. Evidence supporting the basis for any scheduled rating credit or debit shall be
53 retained by the insurer for the policy term plus two calendar years pursuant to section 374.205,
54 RSMo. The department of insurance shall notify commercial casualty insurers of the
55 requirements of this section by bulletin.

56 **4. Any renewal involving a "premium alteration requiring notification" as defined**
57 **in subsection 6 of section 379.321, shall be handled pursuant to the requirements of this**
58 **subsection.**

2 [379.362. 1. Commercial property insurance and commercial casualty
3 insurance policies shall be exempt from those provisions of sections 379.316 to
4 379.361, sections 379.420 to 379.510 and section 379.888 which concern regulation
by the department of policy language, policy provisions or the format of such

5 policies, or the rates associated with such policies, for any policy for which the
6 policyholder certifies in writing, on a certification form approved by the department,
7 that the policyholder understands that the policy's language or the policy's rating is
8 unregulated by the department and that the requirements of either subdivision (1) or
9 subdivision (2) below are met:

10 (1) The policyholder has utilized the services of the independent insurance
11 adviser. For purposes of this section, the term "independent insurance adviser"
12 means a person who is qualified through education, training or experience to assess
13 the purchaser's insurance needs and analyze the policy with or on behalf of the
14 policyholder. Such an insurance adviser may be an employee of the policyholder or
15 a person retained by the purchaser, provided that the independent insurance adviser
16 shall not also be an employee of the insurer. Such an independent insurance adviser
17 shall only be compensated for services related to the insurance transaction in question
18 by the policyholder; or

19 (2) The policyholder's commercial operations meet any two of the following
20 criteria:

- 21 (a) One hundred or more employees;
- 22 (b) A net worth of over twenty-five million dollars;
- 23 (c) Net revenues or sales of over fifty million dollars;
- 24 (d) Paid aggregate annual commercial insurance premiums of over fifty
25 thousand dollars, excluding workers' compensation and employer's liability
26 insurance;
- 27 (e) Is a not-for-profit or public entity with an annual budget or assets of at
28 least twenty-five million dollars; or
- 29 (f) Is a municipality with a population of over fifty thousand inhabitants.

30 2. An insurer writing a commercial property or commercial casualty
31 insurance policy pursuant to subsection 1 of this section shall retain a copy of the
32 policyholder's written certification as part of the insurer's policy records of the
33 transaction.

34 3. Nothing contained in subsection 1 of this section shall be construed as
35 exempting commercial property or commercial casualty policies which meet the
36 requirements of subsection 1 of this section from any regulatory authority of the
37 director of the department of insurance other than that authority related to the
38 oversight of the policy language, policy provisions or the format of policies, or of the
39 rates used to calculate the amount of premium charged. In particular, nothing
40 contained in subsection 1 of this section shall limit the director's authority over
41 excessive, inadequate or unfairly discriminatory rates.

42 4. The director may, by rule, require insurers providing coverage pursuant to
43 subsection 1 of this section to retain information in such insurer's files identifying the
44 policies providing such coverage, and to report to the department aggregate data
45 regarding the types of such coverage written and the amounts charged for such
46 coverage.

47 5. Notwithstanding the provisions of section 384.017, RSMo, commercial

48 property or commercial casualty insurance meeting the requirements of subsection
49 1 of this section may be procured through a surplus lines licensee from an eligible
50 surplus lines insurer even though the same type of coverage or quality of service is
51 obtainable in the market from admitted insurers.]